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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER	
BROOKS, MATTHEW L	
ART UNIT	**PAPER NUMBER**
3629	

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/911,647	GUILLEMIN, GUSTAVO M.	
	Examiner	Art Unit	
	Matthew L. Brooks	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *28 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 11 is objected to because of the following informalities: Apparently at the end of page 3, the amendments were cut off and there is no period. Appropriate correction is required.

35 USC § 112 1st

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

It should be **noted** that there are at least two ways to interpret Applicant's claims. One would be that the invention simply relates to an allocation of an amount used to an

authorized user's account, this is old and well known with in the art. The other interpretation could be that the Applicant is claiming a complicated algorithm in combination with several factors that produce a different allocation amount or value for different users and different machines. The later example requires more guidance and direction (as originally filed) in order to enable the invention. If Applicant intends the later interpretation then less may be known in the art and the art is less predictable, thus the specification needs to show more detail (specific and useful) as to how to make and use the invention in order to be enabling in order for the public's end of the bargain to be struck. See, e.g., Chiron Corp. v. Genentech Inc., 363 F.3d 1247, 1254, 70 USPQ2d 1321, 1326 (Fed. Cir. 2004). All that could be found regarding the later interpretation is found on pages 5 and 6 of Applicant's specification and not once is an actual quantitative example given on any value or amount determined. Merely states simply things can be charged or can be applied. And the rates factors that are disclosed are well known to apply to determine a charge or rate, as shown with in Section 102 below.

In regards to the "rates to be charged for machine usage can vary based upon user", as presently set forth, the processor is essentially a black box with no description of the internals thereof. The disclosure is thus insufficient in failing to set forth in an adequate and sufficient fashion, a description of the internals and workings of the method which would enable performance of all of the features (i.e., inputs, determining/depending factors, etc.) that are disclosed and claimed. If applicant is of the opinion that there is a description in the prior art (in the form of literature, etc. having a date prior to the filing date of this application), of the internals of the "processor" that

can accomplish the disclosed and claimed features (i.e., inputs, conditioning, etc.), copies of said literature, etc., must be submitted for appropriate review by the Office. See In re Ghiron et al, 169 USPQ 723, 727.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1-19** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The amendments at best are confusing

5. **Claims 1-19** are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: In the independent claims, claim 1 for instance, the method never actually "uses a biometric characteristic" rather only provides machines with a biometric reader and employs a processor to process them but never actually introduces the biometric characteristics of a user using a machine and monitoring thereof.

6. The term "amounts" in the **claims 1-19** is a relative term which renders the claim indefinite. The term "amounts" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Is this amount of time used allocated to account, an amount charged, or some type of point system?

Either way an amount of machine used will equate to a usage charge so both have been considered for purposes of novelty and non-obviousness below.

Appropriate action is required.

7. **Claim 18** rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "...depending upon a time that a machine was used." Can be interpreted as "how long used" or "time of day used". The former is addressed in 102 below and the later is addressed in 103 below.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

9. The basis of this rejection is set forth in a three-prong test of:

(1) whether the invention produces a useful, concrete, and tangible result.

The present invention fails the "**useful, concrete,** tangible" result test.

For an invention to be "**useful**" it must satisfy the utility requirement of section 101. The PTO's official interpretation of the utility requirement provides that the utility of an invention has to be (i) **specific**, (ii) substantial and (iii) credible. MPEP 2107. In addition, when the examiner has reason to believe that the claim is not for a practical application that produces a useful result, the claim should be rejected, thus requiring the

applicant to distinguish the claim from the three exceptions to patentable subject matter by specifically reciting in the claim the practical application. In such cases, statements in the specification describing a practical application may not be sufficient to satisfy the requirements for section 101 with respect to the claimed invention.

In the present case Applicant has amended the claims to stress the importance of determining amounts depending upon different factors such as whom the user is, location of the machine, and so on. However when Examiner looks to the specification no amount is ever actually determined. For instance, how a machine amount, dollar amount actually be different say ten dollars in one location and what factors would increase the value of the amount charged in another locale. This would to be blunt either be quite obvious to do in some manner or because of all the limitless factors/possibilities would require the examiner undue experimentation.

10. Another consideration is whether the invention produces a "**concrete**" result. Usually, this question arises when a result cannot be assured. In other words, the process must have a result that can be substantially repeatable or the process must substantially produce the same result again. In re Swartz, 232 F.3d 862, 864 (Fed. Cir. 2000) (where asserted result produced by the claimed invention is "irreproducible" claim should be rejected under section 101). The opposite of "concrete" is unrepeatable or **unpredictable**. Resolving this question is dependent on the level of skill in the art. For example, if the claimed invention is for a process which requires a particular skill, to determine whether that process is substantially repeatable will necessarily require a determination of the level of skill of the ordinary artisan in that field. An appropriate

rejection under 35 U.S.C. § 101 should be accompanied by a lack of enablement rejection under 35 U.S.C. § 112, paragraph 1, because the invention cannot operate as intended without undue experimentation. *See infra*.

In the present Application there are so many factors that may be considered in determining the different rates to be applied to different users and because none are disclosed in the specification any person who tried to use the present disclosure would come up with a different result which is unpredictable.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

12. **Claims 1-19** are rejected under 35 U.S.C. 102(e) as being clearly taught by Pub. No.: US 2002/0077889 A1 (Kolls).

13. With respect to **Claim 1**: Kolls discloses

A method for using biometric characteristics, comprising the steps of:

a. providing a database of information pertaining to machines to be monitored and biometric characteristics of a group of users of the machines ([0039] and [0086] "customer ID");

b. providing the machines to be monitored with mechanisms for determining biometric characteristics of users of the machines during usages of the machines([0051] and [0151]);

c. employing a communications mechanism to transmit the biometric characteristics of the users of the machines, and machine usage information associated with the usages of the machines, to a processor which has access to the database of information ([0039]); and

d. employing the processor to process the biometric characteristics of the users of the machines, the machine usage information, and information from the database to determine amounts to be allocated for the usages of the machines ([0039], [0106], [0122], [0154], [0155] and (Fig 1, 60), [0161] and [0209] and Claim 55 "transaction processor" and note all computers that perform a function have at minimum a central processing unit),

e. the amounts being determined by different rates depending upon which of multiple different users is associated with the biometric characteristics ([0040] "...services for a particular user are "free"" and [0161] and [0209] and Claim 55 "transaction processor" and note all computers that perform a function have at minimum a central processing unit, and [0154-0156] "customer qualifies for special pricing).

14. With respect to **Claim 2**: Kolls discloses

the database also includes information associating the users of the machines with one or more accounts ([0154], [0155] and (Fig 1, 10-30)).

15. With respect to **Claim 3**: Kolls discloses

assigning the amounts to the one or more accounts depending upon the biometric characteristics of the users of the machines, the machine usage information, and/or the information from the database ([0122-0124], [0154], [0155], and (Fig 1, 60-70)).

16. With respect to **Claim 4**: Kolls discloses

the one or more accounts include a business account associated with at least one of the users of the machines [0125] "corporate accounts" and (Fig 3)).

17. With respect to **Claim 5**: Kolls discloses

the one or more accounts include a personal account of one of the users of the machines ([0125] ie; "VIP" and (Fig 2)).

18. With respect to **Claim 6**: Kolls discloses

the database also includes information pertaining to machine usage authorizations and/or limitations, if any, for the users of the machines ([0039], [0046] and (Fig 1, 30-40)).

19. With respect to **Claim 7, 8 and 9**: Kolls discloses

the biometric characteristics include physiological traits and behavioral traits ([0051], [0151], [0114]).

20. With respect to **Claim 10**: Kolls discloses

the communications mechanism comprises a network ([0045] and (Fig 14, 1208)).

21. With respect to **Claim 11**: Kolls discloses

transmitting machine usage information and biometric characteristic information of a user of a machine to a processing center which includes a processor configured to process the machine usage information and to allocate a machine usage charge depending upon the biometric characteristic information ([0046], [0126-0132], [0154-0155] and (Fig 1) and [0040] "...services for a particular user are "free"" and [0161] and [0209] and Claim 55 "transaction processor" and note all computers that perform a function have at minimum a central processing unit)

the machine usage charge being determined by different rates depending upon which of multiple different users is associated with the biometric characteristic information ([0040] "...services for a particular user are "free"" and [0154-0156] "customer qualifies for special pricing).

22. With respect to **Claim 12 and 13**: Kolls discloses

employing a biometric characteristic determining mechanism to acquire a biometric characteristic of a user of a machine during a usage of the machine by the user [0051]); and

processing information pertaining to the usage of the machine and the biometric characteristic to determine a machine usage charge ([0128], [0154], [0155] and (Fig 1, 60-70) and [0040] "...services for a particular user are "free"" and [0161] and [0209] and

Claim 55 "transaction processor" and note all computers that perform a function have at minimum a central processing unit),

the machine usage charge being determined by different rates depending upon which of multiple different users is associated with the biometric characteristic ([0040] "...services for a particular user are "free"").

allocating the machine usage charge to an account associated with the user of the machine ([0128], [0154], [0155] and (Fig 1, 60-70)).

23. With respect to **Claim 14 and 15**: Kolls discloses

the machine comprises a printer and/or photocopier ("copier") ([0044] and Fig 5)).

24. With respect to **Claim 16**: Kolls discloses

a processor configured to process machine usage information to determine a machine usage charge and to allocate the machine usage charge depending upon biometric characteristic information associated with the machine usage information ([0047], [0050], [0151], [0154-0156] and (Fig 1) and ([0040] "...services for a particular user are "free"" and [0161] and [0209] and Claim 55 "transaction processor" and note all computers that perform a function have at minimum a central processing unit).

25. With respect to **Claim 17, 18, and 19**: Kolls discloses

the processor is configured to allocate the machine usage charge to one or more of a plurality of accounts depending upon a location of a machine that was used, or a time that a machine was used, or whether a usage of a machine was authorized ([0004]. [0047], [0050], [0139], (Fig1, 50-70) and ([0040] "...services for a particular user are "free"" and [0161] and [0209] and Claim 55 "transaction processor" and note all

computers that perform a function have at minimum a central processing unit, and [0157]).

Claim Rejections - 35 USC § 103

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

27. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

28. Claims 1-19 are alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Kolls in view of Patent No.: 6,243,450 (Jansen).

Kolls discloses all of the limitations as laid out in 102 above.

Applicant argues, and amended accordingly in attempt to overcome the 102, that Kolls does not disclose "machine usage rates varying depending upon factors such as location, time used, actual user".

Jansen discloses for both public and private application programs that provide various services, after receiving authentication, and after taking into various factors such as: 1. machine used (C1, 30-45) and 2. different rate depending on use (C1, 63-

66) and 3. taking data into account (C2, 1-5) and 4. having a file having service rate information (C2, 20-25) and 5. applying amounts to various accounts (C5, 5-10) and 6. allocation of amounts based upon service type and rate (C6, 1-5) and 7. the use of a processor to carry out transactions and notify user accordingly (C11, 43-60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the teaching of Jansen to Kolls because it would allow the system/method in Kolls to effectively come up with different rates and allocate in accordance to a users' account per each use of service provided publicly or privately.

Response to Arguments

29. Applicant's arguments filed 10/21/2005 have been fully considered but they are not persuasive. See reasons set forth below.

NOTE: If Applicant states Examiner says something please point to where in the Office Action it was stated. Further, Applicant is asked to point to where and what in the reference Applicant disagrees with such as Paragraph number and wherefrom Applicant is drawing interpretation. Further still Applicant, when amending to the claims and/or arguing interpretations of the claims, should point to support, as filed in the original disclosure, if there is any in order that a determination can be made as to new matter.

30. With respect to Applicants Remarks (10/21/05), 1st Paragraph, pg 6, under 102; Applicant states "...Kolls does indeed disclose that a biometric or other test can be performed to determine if the use of the vending machine has been authorized..." that statement alone is sufficient for purposes of 102 rejection for the apparatus/system as claimed and sufficient for claim 1, the method steps (a) –(d). As to the newly amended

subject matter, for instance claim 1 (e), that of "rates can vary depending upon user" is also found with in the reference (See 102 above and Kolls [0040]).

31. With respect to Remarks 2nd paragraph, pg 6; In regards to the first sentence Kolls does show the rate charge can depend upon the identity of the person, ie; services for particular user are free. An embodiment of the Kolls business center system is placed in hotel and could easily allow for instance a Employee are Hotel guest get a discount rate compared to use of the machine by another user.

As to the rate depending upon the project, department, business or other entity, should not be addressed because Applicant has not even claimed what is argued. En arguendo, even if claimed charging users different rates depending upon all of those factors is well known in the art. For instance if the user has a "bulk" project it is well know to charge less per item, because the user is actually spending more.

In regards to the second sentence that the "rates depend upon time machine is used, location, authorized". In regards to charging different rates based upon time used, is old and well know to charge for services. If Applicant means what time of day used although the reference has not been searched for this 2nd interpretation of the limitation, even if it does not have it changing rates and/or charging less based upon day of the week and/or times thereof has been done for as long as business has been around. One merely need walk to the local pub for a happy hour to observe this phenom. As far as usage of machine rate depending upon the location of the machine, is also old and well known. For instance the market can bear more for services in NY

City than it could in Boise, Idaho; so one of Koll's systems in NY will charge more for a photocopy, for instance, than the same photocopy in Boise.

As to the third sentence Kolls does show adjusting factors for determining a usage price. (see [0156])

32. With respect to 3rd Paragraph pg 6; as to the rate depending upon which machine is used, although not found in the claims and or the specification and if it is Applicant is asked to show Examiner. But note, charges for a machines use always depend upon the what type of machine is used, and is certainly found inherently with in the four corners of the Koll's reference. For instance if a user uses a computer charges differ than if the same user were to use a photocopier. Rest of same sentence, see above.

As to same paragraph same sentence "notifying a user not authorized", although not claimed, and if is/or/was either way common to notify a user not authorized and/or which account has been billed. Kolls discloses allocation of amounts to an account and of course a user would have to be notified, by bill or otherwise, even through the used of the machine what account is billed. As to not notifying a user not authorized, certainly Kolls does this, if in the fact that a user is not allowed to use the machine/denial of use upon identifying users' self with their biometric characteristics.

Note: Overall this is a misplaced argument that the "present invention can also be configured..." because most certainly Kolls discloses a processor which also "can be" and is configured to do all of the above functions. (ie; Kolls processor can be/is configured to charge more if placed in the Ritz versus a Motel 8).

33. With respect to pg 7 1st paragraph; the first sentence simply put is not true. (see above). As to the second sentence that Kolls does not disclose charging a different rate depending upon the identity of a person, again Applicant is directed to [0004] where a particular user can be free, and [0156] wherein after identity processing it may be determined that a customer qualifies for special pricing.

With respect to pg 7 2nd paragraph; Applicant argues that Kolls does not disclose a "processor" that can charge the machine usage to one of a plurality of a user's accounts if authorized. Applicant is directed to again [0156] and "transaction processor" [0161] and [0209] and CLAIM 55, all of which thoroughly teach that the user upon being authorized. As to the plurality of accounts Applicant can merely look to [0039] and [0111] for some examples ("Additionally, a user can select the amount to add, subtract, or transfer from the smart card and from other banking, credit accounts,…").

Conclusion

34. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A. Pub. No.: US 2001/0016819 A1 (Kolls)

B. Pub. No.: US 2002/0107792 A1 (Anderson)

C. Pub. No.: US 2002/0186844 A1 (Levy et al.)

D. Pub. No.: US 2002/0138828 A1 (Robohm et al.)

F. Patent No.: 6,035,403 (Subbiah et al.)

(Newly Added on 12/19/05)

G. Patent No.: 5,708,422 which shows many payment schemes possibly contemplated by the present disclosure.

H. Patent No.: 5,859,419 more payment schemes.

I. Patent No.: 6,125,349 charge different based upon a factor such as loyalty

35. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew L. Brooks whose telephone number is (571) 272-8112. The examiner can normally be reached on Monday - Friday; 8 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-8112. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MLB
12/19/05

JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600